

PHIL 140

§§0103 (1:00pm Armory 0103), 0106 (10:00 am Art & Soc 3221), 0107 (12:00 pm Phys 4208)

Discussion Notes

April 11 2008

In each section, I began by asking informally whether anyone favored the death penalty. In each section, there was a small number of respondents, so the general sentiment was that punishment by the State in the form of killing is not ethically permissible, no matter the crime or condition. All those who responded in favor, however, maintained that it should only be adopted as a last resort under the most extreme circumstances¹: namely in the case of “moral monsters,” exhibiting no capacity for redemption let alone reform, and who have willfully committed numerous heinous murders and atrocities and have candidly confessed to them and would willingly commit more of their crimes (**Corey Levine §0106**, **Jessica Mules §0107**, **Kyle Lucas §0103**). However, **Zina Maker §0107** also mentioned the importance of distinguishing in the above category *psychopaths* from *sociopaths*: the former cannot distinguish right from wrong and are arguably mentally ill, whereas the latter *can*, but do not *care*. Hence in the “moral monsters” category, those that should be executed by the State should be the ones who *willingly* shirk their fundamental responsibilities (and hence their rights to life) as moral agents. On the other hand moral monsters, who are mentally ill (psychopaths) may stand as candidates for life confinement with psychiatric supervision.² **Ben Alencherry §0107** however offered as well a point concerning the death penalty based on the *deterrence* aspect of punishment, in a manner similar to the US’s position concerning MAD (mutually assured destruction) during the nuclear arms race of the Cold War³: Though Ben considered it ethically impermissible for the State to actually implement the death penalty in any particular situation, (just as it would be, to say the least, ethically impermissible for the US or the then-USSR to actually use their nuclear weapons in any conflict), nevertheless the State could invoke the *possibility* as a deterrent against heinous offenses.

Based on the above points and the general sentiment of each discussion section, the points made in van den Haag’s were viewed with general critical disfavor. For instance, regarding van den Haag’s points that “Kant and...Hegel, have insisted that, when deserved, execution, far from degrading the executed convict, affirms his humanity,”⁴ (Vaughn 263) **Paul Henry §0106** pointed out the blatant fact that terminating one’s life is hardly a prescription for “affirming one’s humanity!” In other words, Paul, like others (**Erin Coco §0107**) appealed to the *reformation* aspect of punishment, rather than the *deterrence* aspect primarily emphasized by van den Haag. In the former, life sentencing seems the best way to affirm the criminal’s humanity, as pointed out by Paul, insofar as the criminal is allowed the chance to reflect on his/her action(s) and perhaps reach a point of remorse towards the victim. On the other hand, such a chance is by default taken away when the criminal is put to death. Moreover, as **Elvis Martinez §0106** and **David Namude §0107** mentioned, the very irreversibility of the action on part of the State would

¹ The narrow scope of permissibility is reminiscent of Marquis’ views on abortion, insofar as he likewise advocates an extremely narrow scope of its permissibility.

² Note however the poignant irony discussion in “Critical Thought: Medicated for the Death Penalty,” text-box in Vaughn involving the case of Charles Singleton: “The voices inside Singleton’s head varied, in volume and number, regardless of whether he had taken his medication for his schizophrenia... Singleton’s attorney said his 44-year-old client welcomed his execution because he was tired of living with mental illness.” (Vaughn, 252).

³ Recall Leland’s analogy offered in Monday’s lecture (April 7).

⁴ Note however the tension in this claim and in Reiman’s overview of Kant and Hegel’s positions (Vaughn, 265-266), in which vis-à-vis Kant’s Formula for Humanity, renders capital punishment ethically impermissible (Slide #5, April 9, Saunders’ lecture).

render it impossible to exculpate someone wrongly accused, further calling into question van den Haag's rather cavalier dismissal of the objection concerning miscarriages of justice having *nothing* to do with the ethical question concerning the *intrinsic* ethical rightness/wrongness concerning the death penalty (Vaughn, 261). The analogy offered by van den Haag:

Despite precautions, nearly all human activities, such as trucking, lighting, construction, cost the lives of some innocent bystanders. We do not give up these activities, because the advantages, moral or material outweigh the unintended losses. (Vaughn, 261)

was further called into question by **Daniel Loveland §0103**, insofar as it seems to invoke as somewhat questionable use (or misuse) of utilitarian notions, often heard in notorious defenses or rationalizations of abuses of authority in totalitarian regimes ("though death penalty without fair trial may be unjust to the accused, *it preserves the peace and order of society,*" etc.) Aside from that, the analogy is questionable because it begs the question for the moral legitimacy of capital punishment: i.e. it presupposes that the moral status of the acts of turning on a light switch versus turning on the current to electrocute someone are on the same ground. The analogy offered by Van den Haag would only carry weight if the question of the moral status of the legitimacy of the death penalty has been settled: but that is an issue he must *show by argument*, not presuppose! In other words, the presumed moral legitimacy of the death penalty should be derived by as a conclusion, not comprise a premise.

Karuna Panitz §0106 and **Ashley Mondestin §0106** both pointed out what may appear to be a basic logical incoherence, when punishing murderers via the death penalty, which could be phrased in the question: "Why do we kill people who kill people to show that killing is wrong?" Granted, however, as **Karuna** and **Ashley** mentioned, this criticism doesn't apply to the question of the moral legitimacy of the death penalty when applied to capital offenses besides murder (i.e. treason). In addition, **Karuna** pointed out what appears to be another tension in van den Haag: In note 10, (p. 263, Vaughn) van den Haag concedes that he would refrain from advocating the use of the death penalty if in the long run it leads to increase in the murder rate (versus in the scenario in which the death penalty is not enforced). Karuna's point is that throughout the article, van den Haag's deterrence arguments seem to stand on basically deontological notions, (i.e. he dismisses *consequentialist* issues like the cost of the death penalty as well as problems concerning miscarriages of justice), yet this point is obviously rule utilitarian. In other words, van den Haag seems to be applying consequentialist notions in a rather selective fashion.

Though as shown above many had problems with van den Haag, this is not to say that Reiman's argument was endorsed uncritically, despite the overall anti-death penalty consensus. For instance, **Daniel Loveland §0103** pointed out that the crux of Reiman's position stems from a *retribution* model of punishment. But surely, just as capital punishment can be meted in a manner stemming from other notions (deterrence, reform, prevention) so historically and legally capital punishment serves other purposes besides punishing first-degree murderers. This appears to make Reiman's points guilty of the fallacy of composition (what is true for the part is also true for the whole) in the sense that Reiman never addresses how his proportional retributionism (lying in the constraints of what society considers are humane forms of punishment) extends to other aspects of punishment notions, nor of the other uses of capital punishment.

The analogy concerning torture was also called into question by many: for don't there exist "humane" ways of killing which minimize suffering (beginning with the invention of the guillotine into the present uses of lethal injections, etc.?) Add to that, as van den Haag mentions (n. 14, p 264, Vaughn) executions aren't public spectacles in the US and in other Western liberal

democracies with the death penalty, indicating that the ‘hard-hearted’ charge against the death penalty (from the basis of the claims concerning torture) may not transfer. Though (further echoing van den Haag’s points concerning the cruelty or prolonged time death row (Vaughn, 261)) **Doug Weithoner §0107** argued that prolonged solitary confinement can certainly be considered to differ from physical torture only by a hairs’ breadth. Last of all, as **Alex Smallcomb §0103** pointed out that though one may criticize van den Haag for abstracting away too much (in his dismissal of the ‘how’ issues concerning cost and unjust application of the death penalty) the fact remains that ethicists need to start from *some* level of idealization before the very notion of innate moral worth can even make any sense at all.